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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	David P. Veilleux; Christopher J. Edge	Examiner:	Naresh Vig
Serial No.:	09/808,851	Group Art Unit:	3629
Filed:	March 15, 2001	Docket No.:	1037-027US01
Title:	COLOR IMAGE DISPLAY ACCURACY FOR DISPLAY DEVICES ON A NETWORK		

CERTIFICATE UNDER 37 CFR 1.8 I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office on September 26, 2003.

By: Angela S. Watson
Name: Angela S. Watson

RESPONSE

Commissioner for Patents
Alexandria, VA 22313-1450

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Dear Sir:

In response to the non-final Office Action mailed May 28, 2003, the period of response for which has been extended one month to run through September 28, 2003, Applicants respectfully request reconsideration in view of the following remarks. Before addressing the specific grounds of rejection advanced by the Examiner, however, Applicants wish to comment on the continuing lack of progress in this application.

In this, the third, non-final Office Action, the Examiner has again resorted to hindsight-based contrivance in place of motivation in the prior art, and relied on vague, unsubstantiated sources of prior art in place of well-established prior art teachings. Pursuant to MPEP § 707.02, Applicants respectfully request that the Supervisory Patent Examiner in charge of this application inspect the prosecution history, and review the applicable rejections in the interest of expediting prosecution.

From the course of prosecution so far, it is clear that the Examiner has applied neither effective prior art nor proper reasoning to support the various obviousness rejections under section 103. Instead, the grounds of rejection have continuously shifted and morphed from one

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Office Action to the next, resulting in an ever-changing collection of disparate, unrelated references, with the only constant being Applicants' claims. Improper legal analysis, combined with a distortion of the true scope and content of the prior art, has resulted in considerable and unfortunate delay in the prosecution of this application.

Applicants have little choice but to again dissect the Examiner's analysis piece-by-piece to expose the underlying legal and technical errors, but first wish to address a troubling trend of ambiguity that has pervaded the Office Actions to date. In particular, Applicants take issue with the Examiner's reliance on vague, unsubstantiated sources of prior art. It is unclear, in many instances, whether certain teachings identified by the Examiner are intended to serve as part of the grounds of rejection, and, if so, whether those teachings actually reside in the prior art. Instead of identifying particular references, the Examiner seems to refer merely to company names and rely on his own personal knowledge of products offered by those companies.

For example, the Examiner has once again cited a number of allegedly prior art teachings (DIY Network, Alldata, Pongo, Twaze, PicHost, and Eddie Bauer) without producing references or even substantiating the prior art status of the teachings. None of these teachings were explicitly stated to be part of the basis for the 103 rejections, yet they were mentioned and relied upon to establish the obviousness of various aspects of the claimed invention. Perhaps most disturbing was the Examiner's reliance on the Eddie Bauer web site, which has been thoroughly distinguished from the claimed invention in previous responses, and also challenged as lacking a substantiated prior art date. After specifically addressing this issue in the previous response, Applicants are surprised to again see the Examiner rely on the nebulous, unsubstantiated "teachings" attributed to the Eddie Bauer web site without benefit of a prior art date.

Applicant points out that the Examiner is permitted to take official notice of facts outside of the record only when those facts are capable of "instant and unquestionable demonstrations as being well-known." Moreover, when a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons.

If the Examiner persists in his reliance on any of the alleged teachings of DIY Network, Alldata, Pongo, Twaze, PicHost, and Eddie Bauer, Applicants request that he specifically identify those teachings as forming part of the rejection, and demand that the Examiner submit an

affidavit that specifically details this personal knowledge, including the date of and public nature of the alleged teachings, to afford Applicant an opportunity to respond, as is specifically required by the 37 CFR. 1.104(d)(2).

Along these lines, the Examiner also appears to have rejected Applicants' claims at least partly in view of "Microsoft Corporation" and "IBM Corporation." Those companies and many of their products are well known, but the companies themselves do not constitute particular prior art references. Although Applicants presume that the Examiner is referring to particular products provided by Microsoft and IBM, in view of the Examiner's discussion of the IBM AS/400 and the Microsoft Windows XP operating system, the Examiner did not provide any documentary evidence for the record of the teachings embodied by those products. Interestingly, the Examiner has failed to even consider whether the Windows XP operating system was publicly known or used at the time the present application was filed.[1]

With respect to IBM, for example, the Examiner requested that the Applicants "reference AS/400 Command Language manual which discloses how a user can configure a 3270 device (used with IBM mainframe) on an AS/400 device." The Examiner did not provide a copy of the AS/400 manual, nor cite specific portions of that manual in relation to the requirements of Applicants' claims. Apparently, the Examiner cited the AS/400 device as teaching the configuration of display settings at a server, so that information can be displayed on different devices. The Examiner's characterization of the IBM device makes no mention of the modification of color images based on the colorimetric responses, and therefore appears to side-step the actual limitations required by Applicants' claims. This issue is discussed in greater detail below. More importantly, however, the Examiner has asked Applicants to accept the Examiner's characterization, without putting into the record the actual manual relied upon by the Examiner. If the Examiner intended to provide a copy of the manual, Applicants would certainly appreciate that copy. In view of the evidentiary record to date, however, the functionality of the IBM AS/400 seems to be rather nebulous in the context of the claimed invention. Moreover, Applicants have no idea when the alleged functionality of the AS/400 system was publicly known or used.

[1] To the best of Applicants' knowledge, Windows XP was not commercially available until several months following the filing date of this application.

With respect to Microsoft, the Examiner likewise provided no supporting documentation but generally referred to the Windows XP operating system. The Examiner appeared to assert that the XP operating system guides a user through a color profiling process upon installation. On the other hand, to the puzzlement of Applicants, the Examiner then seemed to indicate that he had not really inspected the XP operating system in sufficient detail to make such an assertion, but rather was relying on a high degree of speculation. Specifically, as stated in the Office Action:

> Examiner has not tried to not accept the default settings and see what further action does Microsoft perform. Applicant is requested to try this feature in Microsoft Windows XP installation to see if Microsoft displays additional screens for user to accept.

Hence, the Examiner seems to have stopped short of the required evidentiary standards, and shifted the PTO's burden to Applicants, which is improper. Of course, even if the Microsoft XP operating system were a proper prior art "reference," it is unclear how merely changing display settings bears any relation to guiding a user through a color profiling process. This issue is discussed in greater detail below. In any event, by requesting that Applicant "try" the XP installation feature, is the Examiner expecting that Applicants establish a prima facie case of unpatentability against their own claims? This is the Examiner's burden, and it has not been met.

As a further concern, the Examiner's analysis is fraught with contrived motivations (such as "business choice") that were either pulled from thin air or plucked from Applicants' own disclosure, rather than identified within a specific prior art reference. One example is the Examiner's statement that "it is business choice to elect what information a business elects to store in cookies to meet their business requirements." If the specific information conveyed within a cookie is simply a matter of business choice, then it seems that every module, feature, and function of a software system might well be written off as obvious as a matter of business choice. This is not the correct analysis in establishing a prima facie case of obviousness. Another example is the Examiner's conclusion that various features of the claimed invention would have been obvious "to present the image for remote users as close as possible to the original and minimize customer complaints," a motivation which the Examiner did not appear to attribute to any prior art teaching, as is required to establish a prima facie case of obviousness.

In summary, Applicants are left to wonder (a) which of the many references mentioned by the Examiner actually form the intended basis for the rejections under section 103, (b) which of the references, in some cases, actually qualifies as prior art, and (c) what the content of several of those references actually embraces, absent any documentation detailing that content. Moreover, Applicants continue to question the source of the various motivations cited by the Examiner, in the absence of an identification of specific prior art teachings in which those motivations reside.

Set forth below are Applicants' remarks in response to the section 103 rejections, much of which was already made of record in the previous response filed March 10, 2003. Applicants respectfully request that the Examiner and his Supervisory Patent Examiner consider the foregoing remarks, and those that follow, in assessing whether the PTO has fairly met its burden in establishing a prima facie case of unpatentability.

Claims 1-6, 10, 17-21, 28, 36-41, and 46

In the Office Action, the Examiner rejected claims 1-6, 10, 17-21, 28, 36-41, and 46 under 35 U.S.C. 103(a) as being unpatentable over Hess et al. (US 6,058,417) in view of Holub (US 6,157,735), and further in view of the article entitled "IMDSP: An Image Display Program for IDL" by Liam Gumley ("Gumley"), Microsoft Corporation and IBM Corporation. Applicants traverse this rejection.

For purposes of review, each of the rejected claims requires receipt of color images from source clients via a computer network, communication of the color images to destination clients via the computer network, and modification of the color images based on the colorimetric responses of display devices associated with the source clients.

The color images may be modified so that the color appearance of the images when presented on a destination client display device substantially matches the color appearance of the images when presented on a source client display device. In this manner, the claimed invention is capable of promoting color display accuracy in networks having multiple source clients that submit images and multiple destination clients that receive the images, such as auction and photography web sites.

In support of the rejection, the Examiner characterized Hess as disclosing an online person-to-person trading system in which images of traded items can be provided by source

clients such as sellers and displayed by destination clients such as buyers. The Examiner acknowledged that Hess fails to contemplate modification of color images based on the colorimetric responses of display devices associated with source clients, as claimed. However, the Examiner cited Holub as teaching calibration of rendering devices to transform input color image data to output color image data.

The Examiner recognized that Hess and Holub lack any teaching that would have suggested the desirability of modification of the Hess system in view of Holub to include the features required by claims 1-6, 10, 17-21, 28, 36-41 and 46. However, the Examiner further cited Gumley. The Examiner stated that Gumley discloses a "need for correctly displaying images on user devices and IMDSP is a product which is used to display image correctly on user devices."

As mentioned previously, Gumley describes a system for displaying images using Interactive Data Language (IDL) to support data visualization. Gumley makes no reference to online trading environments as taught by Hess, nor color calibration of image rendering devices as taught by Holub. Even more importantly, Gumley fails to teach modification of color images based on the colorimetric responses of display devices associated with source clients, as claimed.

Instead, Gumley describes an IDL-based image display procedure for image *sizing* and intensity *scaling* in view of the size and intensity capabilities of a display device. Hence, Gumley focuses on image sizing and intensity scaling, and makes no mention of color appearance matching between source clients and destination clients. More particularly, the Gumley reference fails to suggest modifying color images based on the *colorimetric* responses of display devices associated with source clients, and provides no motivation to provide such a feature. On the contrary, Gumley merely contemplates image sizing and intensity scaling in view of the display capabilities of a destination display device.

The notion that the Gumley system "allows you to concentrate on your work" so that "all you know is your image was displayed correctly," as cited by the Examiner, sheds no light whatsoever on the requirements of Applicants' claims nor the desirability of modifying the Hess system in view of Holub to incorporate them. Therefore, it is difficult to understand what the Gumley reference adds to the Examiner's analysis. Rather, the Examiner's resort to Gumley appears to be an attempt to bridge the gap between the prior art and the claimed invention with a teaching that simply does not exist outside of Applicants' disclosure.

In particular, the Examiner concluded that it would have been obvious to "modify images for display devices associated with the source clients images to present the images for remote users as close as possible to the original and minimize customer complaints." Insofar as such modification involves color image modifications based on the colorimetric responses of source client display devices, i.e., to achieve color appearance matching, this motivation resides entirely within Applicants' own disclosure, and cannot be found in the Gumley reference. Accordingly, one of ordinary skill in the art, in view of Gumley, would have found no teaching that would have amounted to a motivation to modify the Hess system in view of the Holub reference.

In apparent recognition of the shortcomings of the Hess, Holub and Gumley references, the Examiner further cited the Microsoft Windows operating system. In particular, the Examiner noted that:

> when a user using Microsoft Windows modifies display properties, Microsoft displays the image on the display with the user selected settings, and, prompts the user to accept the settings if the image displayed meets user's preferences. From then on, Microsoft displays the images on user's display with the new settings.

Contrary to the claimed invention, this aspect of the Windows operating system does not relate to modification of color images based on the colorimetric response of a source client display device. Rather, this teaching appears to pertain merely to the adjustment of display settings, such as contrast, intensity, scaling and the like. Such display settings are entirely independent of the color image data used to drive a display, and affect not the color image *per se* but the presentation of a color image. Applicants' claims are not directed to adjustment of display settings. On the contrary, the claims require modification of color images based on the colorimetric response of a source client display device. Moreover, Applicants believe that the Mircrosoft Windows XP operating system does not even constitute prior art against the claims of the present application.

The Examiner also relied upon the IBM AS/400 product, and characterized it as a device that adjusts data streams at a network server based on the type of display on which the data will be presented. Although Applicants are generally familiar with the Microsoft Windows operating system, discussed above, such is not the case with respect to the IBM AS/400 product. The Examiner provided no documentation concerning the IBM AS/400, either to establish prior art status or substantiate the alleged teachings. Accordingly, it is difficult for Applicants to evaluate

the relevance of the IBM AS/400 to the requirements of the claimed invention. Nevertheless, from the Examiner's characterization of the IBM AS/400, it seems clear that it provides no teaching that would have suggested modification of Hess to modify color images based on the colorimetric response of a source client device. Indeed, the Examiner did not even attribute such a teaching to the IBM AS/400.

None of the cited references provides a teaching that would have suggested the desire to add to the Hess system the ability to modify color images based on the colorimetric responses of display devices associated with source clients, as set forth in claims 1-6, 10, 17-21, 28, 36-41 and 46. Therefore, the Examiner has not established a prima facie case of unpatentability under 35 U.S.C. 103(a), and this rejection must be withdrawn.

As a final matter, Applicants note the Examiner's renewed citation to archived pages from the Eddie Bauer web site in support of this rejection, and question whether those pages are intended to support the rejection or whether they is cited for some other purpose. In the event the Eddie Bauer web site is intended to support the rejection, Applicants again ask the Examiner to substantiate the status of the Eddie Bauer web site as prior art, and explain how it relates to the requirements of the claimed invention.

Claims 7-9, 22-27, 35, and 42-45

The Examiner rejected claims 7-9, 22-27, 35, and 42-45 under 35 U.S.C. 103(a) as being unpatentable over Hess et al. in view of Holub, and further in view of Gumley, Microsoft, IBM, and Information Bulletin from Computer Incident Advisory Capability (CIAC).

Applicants respectfully traverse this rejection. Notwithstanding the deficiencies already discussed above with respect to claims 1-6, 10, 17-21, 28, 36-41 and 46, none of the numerous and disparate references cited by the Examiner provides any teaching that would have suggested further modification of the Hess system to offer characterization of the colorimetric responses of the display devices by delivering a series of web pages to a client that guide the clients through a color profiling process, as required by claims 7-9, 22-27, 35 and 42-45.

In support of the rejection, the Examiner recognized that Hess, Holub and Gumley lack a teaching sufficient to arrive at the claimed invention. The Examiner noted that Holub teaches "a method of how it calibrates its systems," and broadly asserted, without support, that any "product provider will design their own process to calibrate their product." In addition, the Examiner

cited the Microsoft Windows XP operating system as teaching users how to calibrate their displays.

Somehow, the Examiner concluded that aspects of the Microsoft Windows XP operating system concerning calibration of a display would conform to the requirements of claims 7-9, 23-27, 35, and 42-45. As discussed above, however, the aspects of the Microsoft Windows XP operating system identified by the Examiner clearly do not involve characterization of the colorimetric responses of display devices. Instead, the aspects identified by the Examiner pertain to modification of display device *settings*. For example, the Examiner noted that the user of the Microsoft Windows XP operating system may be allowed to change the display resolution setting of a display device.

However, modification of display settings, such as resolution, in the Microsoft Windows XP operating system does not involve delivery of a series of web pages, as claimed. More importantly, contrary to the requirements of claims 7-9, 23-27, 35, and 42-45, modification of display settings clearly is not a color profiling process that results in characterization of the colorimetric response of a display device. The Examiner pointed to no teaching within Microsoft concerning delivery of a series of web pages to guide client through a color profiling process. Applicant cannot comprehend how the Examiner has equated adjusting display device settings, such as resolution, with characterizing the colorimetric response of a display device. In view of such glaring differences, it is unclear how the Examiner could possibly reach a conclusion of obviousness with respect to claims 7-9, 23-27, 35 and 42-45.

In addition, with respect to claims 8, 9, 25-27, 44, and 45, the fact that cookies are well known in the art, as evidenced by CIAC, does not amount to a teaching of the generation of web cookies containing particular information representing the results of a color profiling process. Accordingly, the Examiner's discussion of the use of cookies in a general sense offers no insight into this requirement of claims 8, 9, 25-27, 44, and 45. The Examiner stated that it was known to use cookies to identify users and their internet access system. The relevance of this statement, as well as the logic underlying the Examiner's reasoning, completely escapes Applicants. Applicants' have no idea how identifying users and their internet access systems would have suggested generation of web cookies containing color profiling information.

In view of the deficiencies described above, this rejection is improper and must be withdrawn.

Claims 11-15, 29-34, 47-50, and 74

The Examiner rejected claims 11-15, 29-34, 47-50, and 74 under 35 U.S.C. 103(a) as being unpatentable over Hess et al. in view of Holub (US 6,157,735), and further in view of Gumley, Microsoft Corporation, IBM Corporation., Feinberg (US 6,366,891), and eBay. Applicants respectfully traverse this rejection. The applied references fail to disclose or suggest calculating a fee for images modified based on the colorimetric responses of display devices associated with source clients, as required by claims 11-15, 29-34, 47-50 and 74.

In support of the rejection, the Examiner acknowledged that Hess and Holub fail to disclose calculating a fee for each modified image, as set forth in claims 11-15, 29-34, 47-50 and 74. The Examiner cited Feinberg as teaching a data processing system that can be used to conduct a modified auction that involves granting bidders the right to bid in exchange for payment of a small fee. The Examiner also cited EBay as teaching an online auction that charges a fee to the seller based upon the selling price of a product.

In view of Feinberg and EBay, the Examiner stated that it was "known at the time of invention to a person with ordinary skill in the art to charge fees to the user to keep the system operational and generate profit." Then, the Examiner engaged in a puzzling discussion of the fee charging practices of photo hosting services such as Pongo, Twaze, and PixHost. Like the Eddie Bauer reference, it is unclear to Applicants whether such hosting services are intended to serve as additional references in support of the rejections. Moreover, it is unclear whether they constitute legitimate prior art. Applicants respectfully request that the Examiner clarify this issue.

Following another protracted and seemingly impertinent discussion of the billing practices of banks and Internet service providers, the Examiner concluded that it would have been obvious for a company to "charge the fee to their customers upon their approval to minimize complaints from their customers." Whether the Examiner's conclusion flows from the cited references or not, it seems to have nothing to do with the specific requirements of the claimed invention, i.e., calculating a fee for images modified based on the colorimetric responses of display devices associated with source clients. The Examiner apparently has side-stepped this requirement, and therefore failed to establish a prima facie case of unpatentability. Accordingly, this rejection is improper and must be withdrawn.

Rejection of Claims 51-54, 59-62 and 68-71

The Examiner rejected claims 51-54, 59-62 and 68-71 under 35 U.S.C. 103(a) as being unpatentable over Hess in view of Holub and further in view of Gumley, Microsoft, IBM, and CIAC.

Applicants respectfully traverse this rejection. As discussed elsewhere in this response, the applied references fail to disclose or suggest characterization of colorimetric responses of display devices associated with source clients by delivering a series of web pages that guide the source clients through a color profiling process, and modification of color images based on the colorimetric responses of display devices associated with the source clients, as required by claims 51-54, 59-62 and 68-71.

Moreover, the references also lack any teaching that would have suggested characterization of colorimetric responses of display devices associated with both the source clients and destination clients by delivering a series of web pages that guide the source and destination clients through a color profiling process, and modification of color images based on the colorimetric responses of display devices associated with the source and destination clients, as further required by claims 51-54, 59-62 and 68-71. Accordingly, this rejection is improper and must be withdrawn.

Rejection of Claims 55, 56, 63, 64, 72 and 73

The Examiner rejected claims 55-56, 63-64 and 72-73 under 35 U.S.C. 103(a) as being unpatentable over Hess in view of Holub and further in view of Gumley, Microsoft, IBM, and CIAC.

Applicants respectfully traverse this rejection. As discussed elsewhere in this response, the applied references fail to disclose or suggest generation of web cookies for clients containing information representing the results of the color profiling process, and transmission of the web cookies for use in the modification of the color images, wherein a server modifies the color images based on the contents of the web cookie, as set forth in claims 55, 63, and 72. Accordingly, this rejection is improper and must be withdrawn.

Rejection of Claims 57, 58, 66 and 67

The Examiner rejected claims 57, 58, 66, and 67 under 35 U.S.C. 103(a) as being unpatentable over Hess in view of Holub and further in view of Gumley, Microsoft, IBM, Feinberg, and eBay.

Applicants respectfully traverse this rejection. As discussed elsewhere in this response, the applied references fail to disclose or suggest charging a fee for modified color images, as set forth in claims 57, 58, 66, and 67. Accordingly, this rejection is improper and must be withdrawn.

CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: 9-26-03

By: _____

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